accused, and it must convey to him with sufficient clearness and certainty that which the prosecution intends to prove against him and of which he will have to clear himself; second, it is an information to the Court which is to try the accused, of the matters to which evidence is to be directed."

Bot these essentials were absent in the present case.

With the greatest respect to the learned Chief Justice, I am unable to apply his decision on this point in the case of *Lee Chin Kee* v. *Public Prosecutor, supra,* to the present case.

It seems to me an elementary principle of criminal law that an accused person must know exactly what is the charge which he is called upon to answer; and still more so, that he should know of what offence he has been convicted. This is the English law, and I can find nothing in the Criminal Procedure Code to justify my finding that the same principles do not apply in the Federated Malay States. The only difference is that here the Public Prosecutor has the advantage of being able to frame an alternative, but separate, charge.

In view of the express provisions of the Criminal Procedure Code, section 163, that for every distinct offence there shall be a separate charge, I hold that the trial of the accused for the two distinct offences contemplated in section 46(i) of the Motor Vehicles Enactment (Cap. 168) in one charge was not a mere irregularity, but was an illegality, and for this reason the conviction must be quashed, and the fine repaid to the defendant.

Appeal allowed.

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[117] **PRIVY COUNCIL REPORTS**

ANDRE PAUL TERENCE AMBARD v. ATTORNEY-GENERAL OF TRINIDAD AND TOBAGO

[P.C. (Lords Atkin, Maugham and Sir Sidney Rowlatt) March 2, 1936]

[Privy Council Appeal No. 46 of 1935]

Contempt of Court — Administration of justice — Publication of comments — Liberty of the press.

Privy Council — Practice — Contempt of Court — Whether appeal entertained.

By an order of the Supreme Court of Trinidad and Tobago the appellant was fined for contempt of Court alleged to have been committed by the publication in a newspaper of a certain article commencing on the inequality of sentences, citing as examples two sentences at the local sessions in charges of intent to murder. The appellant expressly disclaimed any suggestion that one of the judges was habitually severe, the other habitually lenient. On appeal to the Privy Council:—

Held: that it is the ordinary right of members of the public or the press to criticise in good faith in private or public the administration of justice.

Held further, that to justify a committal for contempt of Court there must be evidence in the article itself taken as a whole, that the publisher has acted with untruth or malice, or that he imputed improper motives to those taking part in the administration of justice.

Upon a preliminary objection raised by the respondent:—

Held, that it is competent to His Majesty in Council to give leave to appeal and to entertain appeals against orders of courts of record overseas imposing penalties for contempt of court.

PRIVY COUNCIL. — Appeal by special leave from the judgment of the Supreme Court of Trinidad and Tobago (September 5, 1934) committing the appellant for contempt of court by publishing on June 29, 1934, in *The Port of Spain Gazette,* an article headed "The Human Element" and ordering him to pay a fine of £25/- or in defaut to be imprisoned for one month and to pay the costs of the proceedings as between solicitor and client.

F. P. M. Schiller, K.C and *Kenelm Preedy* for the appellant.

Edward W. Cave, K.C. and *Richard A. Willes* for the respondent.

The facts appear sufficiently in their Lordships' judgment which was delivered by —

Lord Atkin: This is an appeal by special leave from an order of the Supreme Court of Trinidad and Tobago ordering the appellant to pay a fine of £25 or in default to be imprisoned for one month for contempt of court, and further ordering him to pay the costs of the proceedings as between solicitor and client.

The first question that arises is whether as contended by the respondent the Privy Council is incompetent to entertain an appeal from an order of a court of record inflicting a penalty for contempt of court. The decisions on the point are conflicting. In *Rainy* v. *Justices of Sierra Leone* (1852), 8 Moo. P.C.C. 47; a Board consisting of Lord Cranworth, Knight Bruce L.J., Dr. Lushington and Sir Richard Ryan undoubtedly decided that no such appeal lay. Lord Cranworth, in giving the judgment of the Board, after pointing out that in this country every court of record is the sole and exclusive judge of what amounts to a contempt of court proceeded:

> "We are of opinion, that it is a court of record, and that the law must be considered the same there as in this country; and, therefore, that the orders made by the court in the exercise of its discretion, imposing these fines for contempts, are conclusive, and cannot be questioned by another court; and we do not consider that there is any remedy by petition to the Judicial Committee to review the propriety of such orders."

The argument, with respect, is not convincing, for it would seem to apply equally to all decisions in criminal cases which at that time in both this country and the colony were conclusive and could not be questioned by any court. In *McDermott* v. *Justices of British Guiana* (1868), L.R. 2 P.C. 341, leave to appeal from a committal for contempt had been given "without prejudice to the competency of Her Majesty to entertain an appeal." At the hearing the Board, consisting of Lord Chelmsford, Wood L.J., Sir James Colvile and Sir E. Vaughan Williams, treated the hearing as a motion to revoke the leave. An incidental question was whether the court that imposed the penalty was a court of record and in giving the

judgment of the Board Lord Chelmsford said that the applicant had to show either that the court was not a court of record or that if it was, yet there was something in the order which rendered it improper and therefore the subject of appeal. He proceeded to say at page 363:

> "Not a single case is to be found where there has been a committal by one of the colonial courts for contempt, where it appeared clearly upon the face of the order that the party had committed a contempt, that he had been duly summoned, and that the punishment awarded for the contempt [118] was an appropriate one, in which this Committee has ever entertained an appeal against an order of this description."

It would appear to their Lordships that the grounds of decision assume that jurisdiction exists at any rate in cases where it does not appear on the face of the order that the party had committed a contempt, etc. Where this means that if the order merely recited that a contempt had been committed without more, the Board would examine the alleged contempt, is not clear. But in *Surendranath Banerjea* v. *Chief Justice of Bengal,* (1883) L.R. 10 Ind. App. 171 on an appeal from a committal for contempt by the High Court in Calcutta, the Board examined the written article which was complained of and said that it ws clearly a contempt of court. They set out the passage which has just been quoted, and proceeded at page 179:

> "Their Lordships having decided that the libel was a contempt of court, and that the High Court had jurisdiction to commit the petitioner for a period of two months, the case is not a proper one for an appeal to Her Majesty."

This decision is difficult to reconcile with the doctrine that found favour in *Rainy's* case, *supra,* that the colonial court is sole judge of what constitutes a contempt, and that there is no remedy by way of appeal to His Majesty in Council to review the propriety of such orders.

However, in 1899, in the case of *McLeod* v. *St. Aubyn,* [1899] A.C. 549; the Judicial Committee entertained an appeal from an order committing for contempt and allowed the appeal with costs against the respondent. The point that there was no jurisdiction to entertain such an appeal was not taken, but it seems unlikely that if it were a good point it should not have occurred to counsel or to any of the members of the Board before whom the case came at different stages. The Board in this case quite plainly assumed jurisdiction and their Lordships respectfully agree with their view. There seems no reason limiting in this respect the general prerogative of the Crown to review all judicial decisions of courts of record in the dominions overseas whether civil or criminal: though the discretion as to the exercise of the prerogative may have to be very carefully guarded. It should be noticed that the Order in Council of 1909 dealing with the jurisdiction of the Supreme Court of Trinidad and Tobago, S.R. & O. 1909, page 854, imposes no limit other than pecuniary as to the orders, decisions, etc., of the Supreme Court from which there may be an appeal: and it would appear from it that the Supreme Court itself could have granted leave to appeal to the Privy Council from this order in the present case. But apart from any question of this kind their Lordships come clearly to the conclusion that it is competent to His Majesty in Council to give leave to appeal and to entertain appeals against orders of the courts overseas imposing penalties for contempt of court. In such cases the discretionary power of the Board will no doubt be exercised with great care. Everyone will recognise the importance of maintaining the authority of the courts in restraining and punishing interferences with the administration of justice, whether they be interferences in particular civil or criminal cases or take the form of attempts to depreciate the authority of the courts themselves. It is sufficient to say that such interferences when they amount to contempt of court are *quasi*-criminal acts, and orders punishing them should, generally speaking, be treated as orders in criminal cases, and leave to appeal against them should only be granted on the well-known principles on which leave to appeal in criminal cases is given.

On these principles their Lordships proceed to examine the complaint made in this case. In June, 1934, one, Joseph St. Clair, was charged at the sessions, Port of Spain before Gilchrist J., and a jury, on an indictment containing two counts, one charging the accused with attempt to murder a superior officer, the second with shooting with intent to do grievous bodily harm. It appears that the accused fired his rifle at the officer but failed to hit him. He was found guilty on the second count with a recommendation to mercy and was sentenced on June 12 to eight years' hard labour. He did not appeal.

At the same sessions, one, John Sheriff, was charged before Robinson J. and a jury, on an indictment containing three counts: (1) wounding with intent to murder a particular woman; (2) wounding with intent to murder generally; (3) wounding with intent to do grievous bodily harm. It appears that he attacked with a razor and seriously mutilated a woman who was not the person he had intended to attack. He was convicted on the third count and was sentenced on June 14 to seven years' hard labour. After sentence he said, "I give notice of appeal," and on June 20 filed formal notice of appeal against his conviction. His appeal eventually succeeded apparently on the ground of mis-direction and the conviction was quashed. Meanwhile on June 29 the present appellant, who is the editor-manager and part proprietor of a daily newspaper called *The Port of Spain Gazette,* published the article which has been found to constitute a contempt of court. He did not write it but revised it editorially before publication and [119] undoubtedly is fully responsible for its publication. It is necessary for the purposes of this case to consider the whole article. [The article was then read.] [119]

On July 3, the Attorney-General gave notice of motion to the Registrar of the Supreme Court that he would move for an order *nisi* calling upon the appellant to show cause why a writ of attachment should not issue against him for his contempt in publishing the article in question and on the same date an order *nisi* was made by the court in the terms of the notice of motion. The notice and the order *nisi* at first were limited to contempt in publishing an article calculated to interfere with the due course of justice the com-

plaint being that it was improper having regard to Sheriff's pending appeal. Later it was amended so as to include a complaint that the article contained "statements and comments which tend to bring the authority and administration of the law into disrepute and disregard." In this amended form the matter came before the full court, consisting of the Chief Justice and Gilchrist and Robinson JJ. It was heard on various days in July, and on September 5, the Chief Justice gave the judgment of the court. He acquitted the appellant of contempt in respect of the pending appeal of Sheriff: and no more need be said on that point. But he found that the article was written with the direct object of bringing the administration of the criminal law by the judges into disfavour with the public, and desiring to impose a penalty which if relatively light would yet emphasise that, while the judges would place no obstruction in the way of fair criticism of their performance of their functions, untruths and malice would not be tolerated, he fined the respondent £25, in default one month's imprisonment, and ordered him to pay the costs of the proceedings to be taxed between solicitor and client. The formal judgment, slightly departing from the wording of the oral judgment recited that the appellant had committed a contempt of court, the article having been written "with the direct object of bringing the administration of the criminal law in this colony by the judges into disrepute and disregard" so following the amended order *nisi*.

Their Lordships can find no evidence in the article or any facts placed before the court to justify the finding either that the article was written with the direct object mentioned *or that it could have that effect:* and they will advise His Majesty that this appeal be allowed. It will be sufficient to apply the law as laid down in *R.* v. *Gray*, [1900] 2 Q.B. 36, by Lord Russell of Killowen C.J. at page 40:

> "Any act done or writing published calculated to bring a court or a judge of the court into contempt, or to lower his authority, is a contempt of court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the courts is a contempt of court. The former class belongs to the category which Lord Hardwicke L.C. characterised as 'scandalising a court or a judge.' *Re Read and Huggonson*, (1742) 2 Atk. 469. That description of that class of contempt is to be taken subject to one and an important qualification. Judges and courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no court could or would treat that as contempt of court."

And that in applying the law the Board will not lose sight of local conditions is made clear in the judgment in *McLeod* v. *St. Aubyn, supra,* where Lord Morris, after saying that committals for contempt of court by this country, an observation sadly disproved the next year in the case last cited, proceeds:

> "Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them. But it must be considered that in small colonies, consisting principally of coloured populations, the enforcement in proper cases of committal for contempt of court for attacks on the court may be absolutely necessary to preserve in such a community the dignity of and respect for the court.."

But whether the authority and position of an individual judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

In the present case the writer had taken for his theme the perennial topic of inequality of sentences under the text "The Human Element," using as the occasion for his article the two sentences referred to. He expressly disclaimed [120] the suggestion that one of the particular judges was habitually severe, the other habitually lenient. It is unnecessary to discuss whether his criticism of the sentences was well founded. It is very seldom that the observer has the means of ascertaining all the circumstances which weigh with an experienced judge in awarding sentence. Sentences are unequal because the conditions in which offences are committed are unequal. The writer is, however, perfectly justified in pointing out what is obvious that sentences do vary in apparently similar circumstances with the habit of mind of the particular judge. It is quite inevitable. Some very conscientious judges have thought it their duty to visit particular crimes with exemplary sentences; others equally conscientious have thought it their duty to view the same crimes with leniency. If to say that the human element enters into the awarding of punishment be contempt of court, it is to be feared that few in or out of the profession would escape. If the writer had as journalist said that St. Clair's sentence was, in his opinion, too severe; and on another occasion that Sheriff's sentence was too lenient, no complaint could possible be made; and the offence does not become apparent when the two are contrasted. The writer in seeking his remedy, as has been remarked by the Supreme Court, has ignored the Court of Criminal Appeal: but he might reply that till such a court has power on the initiative of the prosecution to increase too lenient sentences its effect in standardising sentences is not completely adequate. It appears to their Lordships that the writer receives less than justice from the Supreme Court in having untruths imputed to him as a ground for finding the article to be in contempt of court. He has correctly stated both offenders to have been charged with intent to murder: and though he has subsequently inaccurately stated that the conviction of both affirmed that intent, yet seeing that both were convicted of the same intent, viz., to do grievous bodily harm, the reasoning as to unevenness of sentence appears to have been unaffected. And it seems of little moment that the writer thought that this sentence might be for life

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instead of in fact being for fifteen years. If criticism of decisions could only safely be made by persons who accurately knew the relevant law, who would be protected? There is no suggestion that the law was intentionally mis-stated.

Their Lordships have discussed this case at some length because in one aspect it concerns the liberty of the press which is no more than the liberty of any member of the public to criticise temperately and fairly but freely anyepisode in the administration of justice. They have come to the conclusion that there is no evidence upon which the court could find that the appellant has exceeded this right, or that he acted with untruth or malice, or with the direct object of bringing the administration of justice into disrepute. They are satisfied that the Supreme Court took the course they did with a desire to uphold the dignity and authority of the law as administered in Trinidad; there nevertheless seems to their Lordships to have been a misconception of the doctrine of contempt of court as applied to public criticism. A jurisdiction of a very necessary and useful kind was applied in a case to which it was not properly applicable, and this in the view of their Lordships has resulted in a substantial miscarriage of justice. Acting, therefore, on the principles enumerated in the first part of this judgment as applicable to appeals from convictions for contempt of court, their Lordships will humbly advise His Majesty that this appeal be allowed and that the order of the Supreme Court dated September 5, 1934, be set aside. The respondent must pay the costs here and in the court below.

Solicitors: *Maples, Treedsdale & Co.; Burchells.*

GABRIEL TOGONU BICKERSTETH & ANOR. v. EVAN ADELEYE SHANU

[P.C. (Lords Alness and Maugham and Sir Sidney Rowlatt) January 30, 1936]

[Privy Council Appeal No. 97 of 1933]

Will — Construction — Devise of real estate — Condition precedent or subsequent — Vesting — Presumption.

After making various devises of real estate in favour of the testator's son, a will provides that "these devises shall take effect upon my said son attaining the age of 25 years."

Held: that, upon the true construction of the words "shall take effect," they related to the devises taking effect in possession and were not intended to impose a condition precedent on such devises. The devises must therefore be construed as vesting at the death of the testator's death and subject to divestment if the son should fail to attain the age of 25.

In re Greenwood, [1903] 1 Ch. 749 and *In re Blackwell,* [1926] 1 Ch. 223 relied on.

Duffield v. *Duffield,* 3 Bl. N.S. 260, referred to.

The established rule for the guidance of the Courts in construing devises of real estate is that they are to be held to be vested unless a condition precedent to the vesting is expressed with reasonable clearness. In cases of doubt as to the nature of the condition, the presumption is in favour of treating the condition as subsequent.

PRIVY COUNCIL — Appeal from the Supreme Court of Nigeria.

Henry Johnson for the appellants.

A. T. Topham and *Horace Newman* for the respondent.

[121] The judgment of the Board was delivered by — [121]

Lord Maugham: This is an appeal from a judgment of the Full Court of the Supreme Court of Nigeria in an action in which the appellants were the defendants and the respondent was the plaintiff. One of the appellants is now dead and the appeal has been prosecuted by the surviving defendant. The action was brought by the respondent as devisee of certain properties for an account of the rents collected by the appellants in respect of these properties from the death of the testator until the date when the respondent attained the age of 25 years. The question for the determination of this Board is whether the devise to the respondent by the testator's will be vested at the death of the testator subject to being divested if the respondent did not attain 25 or was contingent on the respondent attaining the age of 25. The full Court, following the judgment of the learned Judge in the Supreme Court of Nigeria, has decided in favour of the former view, and it is not in dispute that if that decision was correct the order for an account of rents collected by the appellants in respect of the real properties in question must stand.

The will is dated 2nd November, 1927. The testator desired, as appears from the instrument, to provide for his wife, a number of collateral relatives, and in particular, for a reputed son, the respondent, and a reputed daughter, Phyllis Alaba Shanu. Two two children on that date were infants. The respondent was aged 12 and did not attain the age of 25 until 1930. The testator possessed a considerable number of freehold pieces of land and houses situate in or near Lagos in the Colony of Nigeria, where he had carried on business as a trader, and he appears also to have possessed personal estate of substantial value. By his will, which is drawn up in clauses in English form, after revoking all previous wills and declaring that to be his last will, he appointed the appellants and one Foresythe (since deceased) to be his executors and trustees. By clause 2 in the will he gave and bequeathed some 21 legacies, and it should be noted that a pecuniary legacy of £400 bequeathed to his daughter Phyllis was to be deposited for her in a Lagos bank, and that the rent of a house known as 65, Campbell Street, Lagos, was to be paid to her during the period of two years immediately following her marriage as pocket money. To his son the respondent the testator gave a legacy of £1,000 to be deposited for him in the same bank "until he attains the age of 25 yaers." It may be observed that this gift was beyond doubt a vested gift though the testator attempted to postpone the enjoyment of it until the respondent should attain the age of 25. By clause 3 the testator devised certain land and houses in trust for his wife for the term of her natural life and from and after her death in trust for his son the respondent and his heirs. By clause 5 he devised another piece of land to his daughter Phyllis and her heirs and then follows the sentence: "This devise shall take effect two years aftr ethe marriage of my said daughter." Clause 6, which is th eclause raising the present question, is in these terms: